

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

**DIANA MARCIAL,**  
Petitioner,

v.

**No. 4:25-cv-0073-P**

**WARDEN, FMC CARSWELL**  
Respondent.

**OPINION AND ORDER**

Came on for consideration the petition of Diana Marcial under 28 U.S.C. § 2241 for writ of habeas corpus. The Court, having considered the petition, the response, the record, and applicable authorities, concludes that the petition must be **DENIED**.

Petitioner is serving concurrent 100-month terms of imprisonment for possession with intent to distribute 50 grams and more of a mixture and substance containing methamphetamine, Count One, and for possession with intent to distribute 40 grams and more of fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperdiny] propanamide, Count Two, in violation of 21 U.S.C. § 841(b)(1)(B). ECF No. 10 at App. 005–006. She contends that she is being denied time credits under the First Step Act (“FSA”) even though she has no disqualifying factors. ECF No. 1 at 5–7.

The FSA authorizes the Bureau of Prisons (“BOP”) to grant time credits to eligible inmates. 18 U.S.C. § 3624(g). Calculation of time credits lies within the discretion of the BOP. 18 U.S.C. § 3624(b). “An eligible inmate . . . may earn FSA Time Credits for programming and activities in which he or she participated from December 21, 2018, until January 14, 2020,” and “may earn FSA Time Credit if he or she is successfully participating in EBRR [Evidence-Based Recidivism Reduction] programs or PAs [Productive Activities] that the Bureau has recommended based on the inmate’s individualized risk and needs assessment on or after January 15, 2020.” 28 C.F.R. § 523.42(b). Depending on his or her status, an inmate may earn either ten or fifteen

days' credit for every thirty-day period of successful participation in EBRP Programs or PAs recommended. 28 C.F.R. § 523.42(c). Assuming the inmate meets the eligibility criteria set forth in 18 U.S.C. § 3632(g)(1), and has a term of supervised release to serve, the BOP may apply the credits to transfer the inmate to supervised release up to twelve months early. 18 U.S.C. § 3624(g)(3); 28 C.F.R. § 523.44(d). The FSA time credits are applied when the inmate has earned time credits in an amount that is equal to the remainder of his or her term of imprisonment. 18 U.S.C. § 3624(g)(1)(A).

Certain convictions disqualify inmates from earning FSA time credits. 18 U.S.C. § 3632(d)(4)(D). Relevant here, disqualification applies to an inmate convicted under 21 U.S.C. § 841(b)(1) for possession with intent to distribute a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide, or any analogue thereof. 18 U.S.C. § 3632(d)(4)(D)(lxvi). Petitioner was responsible for possession with intent to distribute such substance, that is, fentanyl. She is not entitled to earn time credits.

**SO ORDERED** on this **6th day of June 2025**.



**MARK T. PITTMAN**  
UNITED STATES DISTRICT JUDGE